



CITY OF DULUTH
REQUEST FOR PROPOSALS FOR

ENGINEERING SERVICES for
LAKEWALK AND SHORELINE REHABILITATION – PHASE IV

RFP NUMBER 21-AA05

ISSUED January 15, 2021

PROPOSALS DUE Tuesday, February 9, 2021 at 4:30 PM CST

SUBMIT TO

CITY OF DULUTH
ATTN: PURCHASING DIVISION
CITY HALL, ROOM 120
411 WEST 1ST STREET
DULUTH, MN 55802

PART I - GENERAL INFORMATION

I-1. Project Overview. The City of Duluth is seeking professional civil and coastal engineering services, including obtaining any survey information required and providing design services, permit requirement determination, permit document creation and permit application management, biddable construction documents, construction survey staking and layout needed to complete construction, cost estimates, design alternatives and construction administration for the rehabilitation of shoreline areas damaged during the October 2018 storm. Finished product will include a condition based on what existed before the storm, plus enhancements within guidelines from FEMA for 406 hazard mitigation spending allowances.

The October 10-11, 2018 storm hit the City of Duluth with sustained winds of 35 to 40 mph overnight. Wind gusts over 60 mph, and waves reaching 18 to 20 feet were recorded. The near-record water levels on the lake, coupled with the strong winds and storm surge, created waves that were stronger and more destructive than the previous two storms that had damaged City shoreline less than a year earlier. Significant portions of the Duluth shoreline, Lakewalk, and storm water infrastructure had been significantly damaged in two previous storms, and the October 2018 storm thoroughly devastated the Lakewalk and large areas of City owned shoreline from Park Point to the Lakewood Water Treatment Plant.

Repairs have been ongoing since 2017. This work will be phase IV of the Lakewalk and shoreline restoration.

Additional detail is provided in **Part IV** of this RFP.

I-2. Calendar of Events. The City will make every effort to adhere to the following schedule:

Activity	Date
Optional pre-proposal site visit. Meet at the Beacon Point trailhead parking lot near 2100 E. Water Street, Duluth, MN at 8:00 am	Tue., Jan 26, 2021
Deadline to submit questions via email to purchasing@duluthmn.gov is 4:30 pm on this date	Mon., Feb 1, 2021
Answers to questions will be posted to the City website no later than this date.	Wed., Feb 3, 2021
Proposals must be received in the Purchasing Office by 4:30 PM on this date.	Tue., Feb. 9, 2021

I-3. Rejection of Proposals. The City reserves the right, in its sole and complete discretion, to reject any and all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in its best interests. The City

is not liable for any costs the Bidder incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-4. Pre-proposal Conference. The City will hold a pre-proposal site visit as specified in the Calendar of Events. Attendance is not mandatory. Attendees are required to follow current CDC guidelines on social distancing and wear a mask. Attendees are responsible for providing their own mask.

I-5. Questions & Answers. Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at purchasing@duluthmn.gov **no later than** the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

I-6. Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website <http://www.duluthmn.gov/purchasing/bids-request-for-proposals/> . Although an e-mail notification will be sent, it is the Bidder's responsibility to periodically check the website for any new information

I-7. Proposals. To be considered, hard copies of proposals must arrive at the City on or before the time and date specified in the RFP Calendar of Events. The City will not accept proposals via email or facsimile transmission. **Due to the closure of City Hall as a result of the pandemic, proposals cannot be dropped off in the Purchasing office. There is a drop box on the 1st Street side of City Hall with an opening that is 11in x 3in. If your proposal is larger than the opening, you must submit it via a delivery or carrier service such as USPS, FedEx or UPS. It is recommended that you have proposals delivered the day before the deadline to ensure they are delivered on time.** The City reserves the right to reject or to deduct evaluation points for late proposals.

Proposals must be signed by an authorized official. If the official signs the Proposal Cover Sheet attached as Appendix B, this requirement will be met. Proposals must remain valid for 60 days or until a contract is fully executed.

Please submit one (1) paper copy of the Technical Submittal and one (1) paper copy of the Cost Submittal. The Cost Submittal should be in a separate sealed envelope. In addition, Bidders shall submit one copy of the entire proposal (Technical and Cost submittals, along with all requested documents) on flash drive in Microsoft Office-compatible or pdf format.

All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is completed and an award decision made.

I-8.Small Diverse Business Information. The City encourages participation by minority, women, and veteran-owned businesses as prime contractors, and encourages

all prime contractors to make a significant commitment to use minority, women, veteran-owned and other disadvantaged business entities as subcontractors and suppliers. A list of certified Disadvantaged Business Enterprises is maintained by the Minnesota Unified Certification Program at <http://mnucp.metc.state.mn.us/> .

I-9. Contract and Term. The successful proposer will be issued a professional engineering services agreement (draft attached). The term of the contract will begin once the contract is fully executed and is anticipated to end by June 15, 2022. The selected Bidder shall not start the performance of any work nor shall the City be liable to pay the selected Bidder for any service or work performed or expenses incurred before the contract is executed.

I-10. Payment. All compensation will be based on percentage of project completed and will not exceed the amount identified in the agreement. Weekly progress reports will be provided to the City and will include tracking of estimated percentage of overall project scope completed to date. Hourly task breakdown by employee is for evaluation purposes only.

I-11. Mandatory Disclosures. By submitting a proposal, each Bidder understands, represents, and acknowledges that:

- A. Their proposal has been developed by the Bidder independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder.
- B. There is no conflict of interest. A conflict of interest exists if a Bidder has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.
- C. It is not currently under suspension or debarment by the State of Minnesota, any other state or the federal government.
- D. The company is either organized under Minnesota law or has a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota, in accordance with the requirements in M.S. 303.03.

I-12. Notification of Selection. Bidders whose proposals are not selected will be notified in writing.

PART II - PROPOSAL REQUIREMENTS

The Proposal shall include the following criteria and be structured accordingly:

1. Cover Letter
2. A restatement of the goals, objectives, and project tasks to demonstrate the Proposer's understanding of the project.
3. An outline of the Proposer's background and experience with similar projects. Experience shown should provide proof of competency in large water body coastal/shoreline engineering projects, working on FEMA-funded projects, and any experience with the City of Duluth.
4. Identify the personnel that will be conducting the project and detail their training and work experience, particularly in the projects listed to document competency in coastal engineering. Identify a professional engineer licensed in the State of Minnesota who will oversee the project. No change in personnel assigned to the project will be permitted without approval of the City.
5. Provide a detailed work plan identifying the tasks to be accomplished and the budget hours to be expended on each task. The work plan shall also identify the deliverables at key milestones in the project as well as any other services expected to be provided by the City. Note: This clause does NOT imply that this project is to be billed on an hourly basis. (See item I-10 above.)
6. Provide a minimum of three (3) references, including names, addresses and telephone numbers, for whom the Proposer has performed similar services.
7. Provide one copy of the cost proposal in a separate envelope, clearly marked on the outside with "Cost Proposal". The terms of the proposal as stated must be valid for the length of the project.

The itemized costs, including any sub-consultant fees, shall include the items listed below.

- A breakdown of the hours by task for each employee.
 - Identification of anticipated direct expenses.
 - Include miscellaneous charges such as mileage and copies.
 - Identification of any assumptions made while developing the cost proposal.
 - Identification of any cost information related to additional services or tasks, include this in the cost proposal but identify it as additional costs and do not make it part of the total project cost.
8. The technical proposal shall be limited to 20 single-sided 8 ½ x 11 pages, excluding the front and back covers, the cover letter and the cost proposal. The separate cost proposal can be an 11" X 17" sheet.

PART III - CRITERIA FOR SELECTION

The proposals will be reviewed by City Staff. The intent of the selection process is to review proposals and make an award based upon qualifications as described therein. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

Qualifications of the Bidder and Personnel	30%
Prior experience with similar work, including work with FEMA and the City of Duluth	40%
Work Plan and Schedule	15%
Cost	15%

PART IV – PROJECT DETAIL

The selected firm will be expected to provide professional engineering services for those locations identified in the attached map. A table with additional information about each site identified in the map is also included. Services shall include the following:

PRE-DESIGN

- Site-specific treatment options proposed will be informed, and responsive to, survey and adjacent preliminary trail and landscape reconfiguration options as provided by the City. Potential options may include:
 - Do nothing
 - Regrade and vegetate
 - Concrete retaining wall
 - Steel sheet pile wall
 - Stone revetment
 - Other recommendation by successful proposer
- Sites where material and equipment delivery can be accomplished by barge will be identified by successful proposer. Appropriate water access options will be evaluated for cost effectiveness as compared to other options.
- In cases where previously developed preliminary designs are provided by the City for a site, those options will be reviewed for relevance, accessibility and cost effectiveness as compared to other concepts suggested by the successful proposer.
- Concepts emerging from pre-design will generate permit-ready preliminary drawings and cost estimates, and be presented to the City for consideration for further design development.

DESIGN DEVELOPMENT

- Complete design for shoreline rehabilitation based on final selection of design alternatives for defined project area(s).

- Provide updated cost estimation and project timelines based on final selection of design alternatives.
- Update any previously submitted permit documents where necessary and submit to regulatory agencies for further review.

FINAL DESIGN AND BIDDING PHASE

- Prepare construction plans and specifications for bidding.
- Support the bid process by attending the pre-bid meeting with contractors, preparing addenda as needed, evaluating the bids in a timely manner, and making a recommendation for contract award.

CONSTRUCTION ADMINISTRATION AND INSPECTION PHASE

- Provide 100 percent on-site construction administration. For purposes of this project, 100 percent construction administration / site observation is defined as a requirement of documented presence by an approved individual whenever construction crews are on site and work is being performed. It shall include daily pre-job briefs and recording meeting notes to be included in weekly observation reports.
- Provide weekly progress report and other reports as needed to support the FEMA process.
- During construction, potential changes to project scope, quantities, cost or final product will be disclosed, reported and discussed with City staff at the next weekly progress meeting or before. No significant changes will be approved by successful proposer without prior City approval in writing.

SCHEDULE

- | | |
|-------------------------|---------------------------|
| • February 22, 2021 | Council Approval of Award |
| • March 1, 2021 | Anticipated start date |
| • May 1, 2021 | Bid out Construction |
| • June 2021 – June 2022 | Construction |

The City reserves the right to interview proposers. If interviews take place, council approval of award is not anticipated until March 8, 2021, and anticipated start date would be adjusted accordingly. Regardless of the start date, construction is required to be completed by June 15, 2022.

FEDERAL PROVISIONS

This project is funded in part with Federal Emergency Management funds. The City of Duluth Supplementary Provisions – State & Federal Funding attached shall apply.

**APPENDIX A - PROPOSAL COVER SHEET
CITY OF DULUTH
RFP# 21-AA05**

Bidder Information:	
Bidder Name	
Mailing Address	
Contact Person	
Contact Person's Phone Number	
Contact Person's E-Mail Address	
Federal ID Number	
Authorized Signature	
Title	



FEMA Project Areas

Lakewalk - 7th Ave E to 21st Ave E



1000 ft

Legend

-  FEMA 404 Hazard Mitigation Locations
-  FEMA Damage Locations

FEMA Project Areas

Section B





Damage #287964, Site 3

Damage #287964, Site 1

Damage #287964, Site 2



Legend

-  FEMA 404 Hazard Mitigation Sites
-  FEMA Damage Sites

FEMA Project Areas

Section D

FEMA Damage #287971

FEMA Damage #28797, Site 1

FEMA Damage #28797, Site 2

FEMA Damage #287968



FEMA Damage #287969

FEMA 404 Hazard Mitigation Site 1

FEMA 404 Hazard Mitigation Site 2



Legend

-  FEMA 404 Hazard Mitigation Sites
-  FEMA Damage Sites

21-AA05 Additional Site Information

Map Section	Description	FEMA DDD info
Section B	FEMA Damage #287964, Site 1	Shoreline Revetment, 388 CY of rip rap $[(97 \text{ LF} \times 12 \text{ FT} \times 18 \text{ FT})/2 = 10742/27] = 388 \text{ CY}$, Storm surge wave action washed rip rap into Lake Superior., 0% work completed. Shoreline Revetment, 237 SY of fabric, 97 FT long x 22 FT wide, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section B	FEMA Damage #287964, Site 2	Shoreline Revetment, 222 CY of rip rap $[(20 \text{ FT} \times 30 \text{ FT} \times 20 \text{ FT})/2 = 6000/2 = 3000]/27 = 222 \text{ CY}$, Storm surge wave action washed rip rap into Lake Superior.
Section B	FEMA Damage #287964, Site 3	Shoreline Revetment, 2,200 CY of rip rap $(198 \text{ LF} \times 20 \text{ FT} \times 30 \text{ FT})/2 = 59,400 \text{ CF} / 27 = 2200 \text{ CY}$, Storm surge wave action washed rip rap into Lake Superior., 0% work completed. Shoreline Revetment, 440 SY of fabric, 198 FT long x 20 FT wide, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section D	FEMA Damage #287969	Shoreline Revetment, 197 CY of rip rap, 71 FT long x 25 FT wide x 3 FT high, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section D	FEMA Damage #287968	Shoreline Revetment, 518 CY of rip rap, 140 FT long x 25 FT wide x 4 FT high, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section D	FEMA Damage #28797, Site 1	Shoreline Revetment, 236 CY of rip rap, 85 FT long x 3 FT wide x 25 FT high, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section D	FEMA Damage #28797, Site 2	Shoreline Revetment, 1,467 CY of rip rap, 330 FT long x 30 FT wide x 4 FT high, Storm surge wave action washed rip rap into Lake Superior., 0% work completed.
Section D	FEMA 404 Hazard Mitigation 14th-16th Site 1	Approx. 336 feet of shoreline
Section D	FEMA 404 Hazard Mitigation 14th-16th Site 2	Approx 200 feet of shoreline
Section D	FEMA Damage #287971 - adjacent to Beacon Point	Shoreline, 555 CY of unclassified fill, 200 FT long x 10 FT wide x 15 FT high, Storm surge wave action cause shoreline bank washout $(200 \text{ FT} \times 10 \text{ FT} \times 15 \text{ FT} / 50\%)$, 0% work completed.

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned, [Company] _____, certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [Company] _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

City of Duluth
Supplementary Provisions – State & Federal Funding
21-AA05 Lakewalk and Shoreline Restoration – Phase IV

1. Disbursements

- a. No money under this Contract shall be disbursed by the City to any Contractor unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.
- b. Unearned payments under this Contract may be suspended or terminated upon the Contractor's refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

2. Subcontracting Requirements

- a. The Contractor shall include in any subcontract the clauses set forth in these City of Duluth Supplementary Provisions in their entirety and shall also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- b. The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

3. Breach of Contract.

The City may, subject to the Force Majeure provisions below and in addition to its other rights under the Contract, declare the Contractor in breach of the Contract by written notice thereof to the Contractor, and terminate the Contract in whole or in part, in accordance with Section 4, Termination, for reasons including but not limited to any of the following:

- a. Failure to begin the Work within the time specified in the Contract;
- b. Failure to perform the Work with sufficient labor, equipment, or material to insure the completion of the specified Work in accordance with the Contract terms;
- c. Unsatisfactory performance of the Work;
- d. Failure or refusal to remove material, or remove and replace any Work rejected as defective or unsatisfactory;
- e. Discontinuance of the Work without approval;
- f. Failure to resume the Work, which has been discontinued, within a reasonable time after notice to do so;
- g. Insolvency or bankruptcy;
- h. Failure to protect, to repair, or to make good any damage or injury to property;
- i. Breach of any provision of the Contract;
- j. Misrepresentations made in the Contractor's bid/proposal; or
- k. Failure to comply with applicable industry standards, customs, and practice.

4. Termination

If the Contractor is in breach of the Contract, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the Work. Upon such termination, the City may take over the Work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional cost incurred by the City in its completion of the Work and they shall also be liable to the City for liquidated damages for any delay in the completion of the Work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the Work such materials, tools, equipment, and plant as may be on the site of the Work and necessary therefore.

City shall have the right to terminate this contract immediately without other cause in the event that all or a portion of the funds that the City intends to use to fund its obligations under the contract have their source with the State or Federal government or any agency thereof and said source reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City

agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

Notwithstanding anything herein to the contrary, the City may terminate this Contract at any time upon written notice given by the City (for any reason, including the convenience of the City) to the Contractor at least thirty (30) days prior to the effective date of the termination of this Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date of the termination provided that Contractor has not committed a breach of this Contract. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law.

5. Force Majeure.

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the Work due to any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency; any acts of the City; causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; nor to any delay of any Subcontractor occasioned by any of the causes specified above. The Contractor shall promptly notify the City in writing within ten (10) days of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the Work for a period of time commensurate with the period of excusable delay.

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Per 2 CFR 200.321, prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms (collectively referred to as socioeconomic firms) are used when possible. The affirmative steps must include:

- a. Placing qualified socioeconomic firms on solicitation lists;
- b. Assuring that socioeconomic firms are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by socioeconomic firms;
- d. Establishing delivery schedules, where the requirements permit, which encourage participation by socioeconomic firms; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7. Contract Work Hours and Safety Standards Act. Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall ensure that no laborer or mechanic involved in the Work is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. In addition, state or local funding sources may impose more strict requirements or higher rates for wages, benefits, and overtime rates. Contractors must review the labor cost bidding data form included with the bid package and compensate workers accordingly.

8. Rights to Inventions Made Under a Contract or Agreement.

For any contracts involving the "substitution of parties, assignment or performance of experimental, developmental, or research work", Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

9. Clean Air Act and Federal Water Pollution Control Act Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Contractor agrees to include this provision in any subcontract exceeding \$150,000 that is financed in whole or in part with Federal funds.
10. Energy Standards.
Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
11. Suspension and Debarment.
This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
12. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors must certify that that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.
13. Procurement of Recovered Materials.
In the performance of this contract, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This shall include making maximum use of products containing recovered materials as designated by the Environmental Protection Agency (EPA) unless (i) the materials cannot be acquired competitively and within the timeframe required by the contract performance schedule; (ii) the materials designated by the EPA do not meet contract performance requirements; or (iii) the materials cannot be acquired for a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
14. Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.
15. Access to Records. The following access to records requirements apply to this contract:
- a. The contractor agrees to provide The City of Duluth, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."
16. DHS Seal, Logo, and Flags. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
17. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable

federal law, regulations, executive orders, FEMA policies, procedures, and directives.

18. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
19. Program Fraud and False or Fraudulent Statements or Related Acts. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

ENGINEER & CITY OF DULUTH

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, is made by and between the City of Duluth, Minnesota hereinafter referred to as the "City" and:

Name: Click or tap here to enter text.

Address: Click or tap here to enter text.

hereinafter referred to as the "Engineer", in consideration of the mutual promises contained herein.

Payments as described in Section V shall be made from Funding Click or tap here to enter text.; Project # Click or tap here to enter text.; and Resolution No. Click or tap here to enter text., passed on Click or tap here to enter text..

The professional engineering services obtained by the City under this agreement concern the following described project hereinafter referred to as the "Project":

Project Number: Click or tap here to enter text.

Project Name: Click or tap here to enter text.

Project Description: Click or tap here to enter text.

The professional engineering services to be provided under this agreement consist of those phases A through G checked below. A more particular description of each phase is contained in Section II, "Basic Services", of the agreement.

- | | <u>Phase</u> | <u>Description</u> |
|--------------------------|--------------|--|
| <input type="checkbox"/> | A. | Study and Report Phase |
| <input type="checkbox"/> | B. | Preliminary Survey Phase |
| <input type="checkbox"/> | C. | Preliminary Design Phase |
| <input type="checkbox"/> | D. | Final Design Phase |
| <input type="checkbox"/> | E. | Bidding Phase |
| <input type="checkbox"/> | F. | Construction Survey and Layout Phase |
| <input type="checkbox"/> | G. | Construction Administration and Inspection Phase |

SECTION I. GENERAL

A. ENGINEER

The Engineer shall provide professional engineering services for the City in all phases of the Project to which this agreement applies, serve as the City's professional engineering representative for the Project as set forth below and shall give professional engineering consultation and advice to the City during the performance of services hereunder. All services provided hereunder shall be performed by the Engineer in accordance with generally accepted Engineering standards to the satisfaction of the City.

B. NOTICE TO PROCEED

The Engineer shall only begin performance of each Phase of work required hereunder upon receipt of a written Notice to Proceed by City representative with that Phase.

C. TIME

The Engineer shall begin work on each successive phase promptly after receipt of the Notice to Proceed and shall devote such personnel and materials to the Project so as to complete each phase in an expeditious manner within the time limits set forth in Section II. Time is of the essence to this agreement.

D. CITY'S REPRESENTATIVE

The City's representative to the Engineer shall be the City Engineer or his or her designees assigned in writing.

E. ENGINEERING GUIDELINES

All work performed as part of this project shall conform to the most current edition of the Engineering Guidelines for Professional Engineering Services and Developments as approved by the City Engineer and on file in the office of the City Engineer.

F. SUBCONSULTANTS

Engineer may contract for the services of sub-consultants to assist Engineer in the performance of the services to be provided by Engineer hereunder but the selection of any sub-consultant to perform such services shall be subject to the prior written approval of the City Engineer. Engineer shall remain responsible for all aspects of any services provided by such sub-consultants to City under this Agreement. City shall reimburse Engineer for sub-consultant services under the categories of services to be provided by Engineer under Phases A through G, as applicable.

SECTION II. BASIC SERVICES

A. STUDY AND REPORT PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

The Engineer shall:

1) City's Requirements

Review available data and consult with the City to clarify and define the City's requirements for the Project.

2) Advise Regarding Additional Data

Advise the City as to the necessity of the City's providing or obtaining from others data or services in order to evaluate or complete the Project and, if directed by the City's representative, act on behalf of the City in obtaining other data or services.

3) Technical Analysis

Provide analysis of the City's needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

4) Economic Analysis

Provide a general economic analysis of various alternatives based on economic parameters and assumptions provided by the City.

5) Report Preparation

Prepare a report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to the City and setting forth the Engineer's findings and recommendations with opinions of probable total costs for the Project, including construction cost, contingencies, allowances for charges of all professionals and consultants, allowances for the cost of land and rights-of-way, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs").

6) Report Presentation

Furnish three copies of the report and present and review the report in person with the City as the City Representative shall direct.

7) Supplementary Duties

The duties and responsibilities of Engineer during the Study and Report Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

8) Completion Time

The Study and Report Phase shall be completed and report submitted by [Click or tap here to enter text..](#)

B. PRELIMINARY SURVEY PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

After written authorization by the City's representative to proceed with the preliminary survey phase, the Engineer shall:

1) General

Perform topographic survey as necessary to prepare the design and provide Construction Survey and Layout as described in Section II.F

2) Boundary Survey

Perform boundary survey if checked.

3) Document Presentation

Furnish a CADD file of the survey base map to the City. Files shall be in the software specified in the Engineering Guidelines for Professional Engineering Services and Developments described in Section I.E.

4) Supplementary Duties

The duties-responsibilities of the Engineer during the preliminary survey phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

5) Completion Time

The preliminary survey phase shall be completed and submitted by [Click or tap here to enter text..](#)

C. PRELIMINARY DESIGN PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

After written authorization by the City's Representative to proceed with the Preliminary Design Phase, the Engineer shall:

1) Preliminary Design Documents

Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

2) Revised Project Costs

Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project costs.

3) Preparation of Grants; Environmental Statements

Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project, preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documentation prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

4) Renderings and Models

Providing renderings or models for the City's use.

5) Economic Analysis

Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow

and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting the City in obtaining licensing; detailed quantity surveys of material, equipment and labor; and audits of inventories required in connection with construction performed by the City.

6) Document Presentation

Furnish three copies of the above preliminary design documents and present and review such documents in person with the City as the City Engineer may direct.

7) Supplementary Duties

The duties and responsibilities of the Engineer during the Preliminary Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

8) Completion Time

The Preliminary Design Phase shall be completed and report or plan submitted by [Click or tap here to enter text..](#)

D. FINAL DESIGN PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) Drawings and Specifications

On the basis of the accepted preliminary design documents and the revised opinion of probable Project costs, prepare for incorporation in the contract documents Construction Plans to show the character and extent of the Project and specifications.

2) Approvals of Governmental Entities

Furnish to the City such documents and design data as may be required for, and prepare the required documents so that the City may apply for approvals and permits of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

3) Adjusted Project Costs

Advise the City of any adjustments to the latest opinion of probable Project costs, identify cause of change and furnish a revised opinion of probable Project cost based on the drawings and specifications.

4) Contract Document Preparation

Prepare final plans and specifications for the Project, which shall include incorporation of plans and specifications prepared by subconsultants. Engineer shall assist in the preparation of contract documents. Engineer shall prepare all necessary project/plan review forms checklists, labor compliance requests, wage determination requests, bidding documents and other forms to assist the City with procuring Bids. Engineer shall review all plans and specifications and supporting documentation and resolve any inconsistencies in said documents being incorporated into the Contract prior to bid. To the extent possible, the Engineer will follow the document format supplied by the City and use the standard terms and conditions supplied by the City in preparation of these documents.

5) Real Estate Acquisition: Legal Description

Based on preliminary design documents, furnish a legal description and recordable reproducible 8-1/2" X 11" plat of each parcel of real estate in which the City must acquire an interest in order to proceed with construction of the Project.

6) Document Presentation

Furnish three copies of the above documents and present and review them in person with the City.

7) Supplementary Duties

The duties and responsibilities of the Engineer during the Final Design Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

8) Completion Time

The Final Design Phase shall be completed and contract documents submitted by [Click or tap here to enter text..](#)

E. BIDDING PHASE

- ☐ Included in this Agreement
☐ Not included in this Agreement

The Engineer shall:

1) Assist in Bidding

Assist the City in obtaining bids for each separate City contract for construction, materials, equipment and services.

2) Advise Regarding Contractors and Subcontractors

Consult with and advise the City as to the acceptability of subcontractors and other persons and organizations proposed by the City's contractor(s) (hereinafter called "Contractor(s)" for those portions of the work as to which such acceptability is required by the bidding documents).

3) Consult Regarding Substitutes

Consult with and advise the City as to the acceptability of substitute materials and equipment proposed by the contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

4) Evaluation of Bids

Assist the City in evaluating bids or proposals and in assembling and awarding contracts.

5) Supplementary Duties

The duties and responsibilities of the Engineer during the Bidding Phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

6) Completion Time

The bidding phase shall be completed by [Click or tap here to enter text..](#)

F. CONSTRUCTION SURVEY AND LAYOUT PHASE

- ☐ Included in this Agreement
☐ Not included in this Agreement

1) General

This phase of work may or may not be performed in conjunction with Phase G, "Construction Administration and Inspection Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase G are to be provided unless specifically indicated in this agreement.

2) Duties

The Engineer shall provide horizontal and vertical control line and grade to enable construction of the improvement as depicted in the Project plans. The number of control points to be established by the Engineer shall be sufficient to permit the construction contractor to construct the improvement within the construction tolerances established in the Project specifications. In addition, the number of control points shall be consistent with standard engineering practice.

3) Accuracy

The Engineer shall provide the horizontal and vertical control points within the same measurement tolerances as the construction tolerances established in the Project specifications. The Engineer shall be responsible for the accuracy of the control points which are established. The Engineer shall be responsible for costs which may result from errors in placement of control points. The Engineer shall be required to establish control points at Engineer's costs only one time. Control points which are lost, damaged, removed

or otherwise moved by the Contractor or others shall be promptly replaced by the Engineer and costs for such replacement shall be computed on a time and materials basis, and reimbursed by the City. The Engineer shall take all reasonable and customary actions to protect the control points established by the Engineer.

4) Supplementary Duties

The duties and responsibilities of the Engineer during the construction survey and layout phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

5) Completion Time

The construction survey & layout phase shall be completed by [Click or tap here to enter text..](#)

G. CONSTRUCTION ADMINISTRATION AND INSPECTION PHASE

- ☐ Included in this Agreement
- ☐ Not included in this Agreement

1) General Duties

Consult with and advise the City and act as its representative as provided herein and in the General Conditions of the construction contract for the Project. This phase of the work may or may not be performed in conjunction with Phase F "Construction Survey and Layout Phase" of this agreement. Inclusion of this phase in the agreement does not imply that services identified under Phase F are to be provided unless specifically indicated in this agreement.

2) Construction Inspection and Reporting

Make visits to the site with sufficient frequency at the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the contractor(s) and to insure that such work is proceeding in accordance with the contract documents. During such visits and on the basis of on-site observations, the Engineer shall keep the City informed of the progress of the work, shall endeavor to guard the City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the contract documents.

3) Warranty Inspection

Eleven months following construction completion, conduct an inspection to document any items to be repaired by the contractor under the conditions of the construction contract warranty. Submit work to be corrected to the Contractor and the City.

4) Review of Technical and Procedural Aspects

Review and approve (or take other appropriate action in respect to Shop Drawings), the results of tests and inspections and other data which each contractor is required to submit, determine the acceptability of substitute materials and equipment proposed by the contractor(s), and receive and review (for general content as required by the specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the contractor(s).

5) Contract Documents

Receive from each contractor and review for compliance with contract documents all required document submissions including but not limited to performance and payment bonds, certificates of insurance report forms required by any City, State or Federal law or rule or regulation and submit the forms to the City for final approval.

6) Conferences and Meetings

Attend meetings with the contractor, such as preconstruction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of the minutes thereof including to the City.

7) Records

- a) Maintain orderly files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original contract documents, including all work directive changes, addenda, change

orders, field orders, additional drawings issued subsequent to the execution of the contract, the Engineer's clarifications and interpretations of the contract documents, progress reports, and other Project-related documents.

- b) Keep a diary or log book, recording the contractor's hours on the job site, weather conditions, data relative to questions of work directive changes, change orders, or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures and send copies to the City. Take multiple photographs of the Work and keep a log and file of the photos. Specifically maintain records of acceptance and rejection of materials and workmanship.
- c) Record names, addresses and telephone numbers of all the contractors, subcontractors, and major suppliers of materials and equipment.

8) Reports

- a) Furnish the City periodic reports, as required, on progress of the work and of the contractor's compliance with the progress schedule and schedule of shop drawings and sample submittals.
- b) Consult with the City, in advance of scheduled major tests, inspections, or start of important phases of the Work.
- c) Draft proposed change orders and work directive changes, obtaining back-up material from the contractor, and make recommendations to the City regarding change orders, work directive changes and field orders.
- d) Report immediately to the City upon the occurrence of any accident.

9) Contract Interpretation, Review of Quality of Work

Issue all instruction of the City to the contractor(s); issue necessary interpretations and clarifications of the contract Documents and in connection therewith prepare change orders as required, subject to the City's approval; have authority, as the City's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the contract documents and judge of the acceptability of the work there under and make decisions on all claims of the contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the contract documents pertaining to the execution and progress of the work.

10) Change Orders and Revisions

Prepare change orders to reflect changes in the Project requested or approved by the City, evaluate substitutions proposed by the contractor(s) and make revisions to drawings and specifications occasioned thereby, and provide any additional services necessary as the result of significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

11) Review of Applications for Payment

Based on the Engineer's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amount owing to the contractor(s) and recommend in writing payments to the contractor(s) in such amounts; such recommendations of payment will constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated, that, to the best of the Engineer's knowledge, information and belief, the quality of such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning Project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due the contractor(s).

12) Determination of Substantial Completion

Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the contract documents and if each contractor has fulfilled all of his obligations there under so that the Engineer may recommend, in writing, final payment to each contractor and may give written notice to the City and the contractor(s) that the work is acceptable (subject to any conditions therein expressed).

13) Authority and Responsibility

The Engineer shall not guarantee the work of any contractor or subcontractor, shall have no supervision or control as to the work or persons doing the work, shall not have charge of the work, shall not be responsible for safety in, on, or about the job-site or have any control of the safety or adequacy of any equipment, building component, scaffolding, supports, forms or other work aids. If the Engineer determines that there are deficiencies in materials or workmanship on the Project, or otherwise deems it to be in the best interest of the City to do so, the Engineer shall be responsible to stop any contractor or subcontractor from performing work on the Project, until conditions giving rise to this need, therefore, are rectified.

14) Engineer Not Responsible for Acts of Contractor

The Engineer shall not be responsible for the supervision or control of the acts or omissions or construction means, methods or techniques of any contractor, or subcontractor, or any of the contractor(s)' or subcontractors' or employees or any other person (except the Engineer's own employees and agents) at the site or otherwise performing any of the contractor(s) work; however, nothing contained in this paragraph shall be construed to release the Engineer from liability for failure to properly perform duties undertaken by him in these contract documents or this agreement.

15) Preparation of Record Drawings

The Engineer shall prepare a set of record drawings in accordance with the Engineering Guidelines for Professional Engineering Services and Development described in Section I.E.

16) Manuals

The Engineer shall furnish operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, and adjusting and balancing); and training personnel for operation and maintenance.

17) Supplementary Duties

The duties and responsibilities of the Engineer during the construction administration and inspection phase shall also include any additional duties and responsibilities to be provided pursuant to the Engineer's proposal attached as Exhibit B.

18) Completion Time

The construction administration and inspection phase shall be completed by [Click or tap here to enter text..](#)

SECTION III. CITY'S RESPONSIBILITIES

A. FURNISH REQUIREMENTS AND LIMITATIONS

Provide all criteria and full information as to the City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, economic parameters and any budgetary limitations; and furnish copies of all design and construction standards which the City will require to be included in the Drawings and Specifications.

B. FURNISH INFORMATION

Assist the Engineer by placing at the Engineer's disposal all available information reasonably known to and in possession of the City.

C. REVIEW DOCUMENTS

Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Engineer.

D. OBTAIN APPROVALS AND PERMITS

Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

E. ACCOUNTING, LEGAL AND INSURANCE SERVICE

Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such auditing service as the City may require to ascertain how or for what purpose any contractor

has used the monies paid to him under the construction contract, and such inspection services as the City may require to ascertain that the contractor(s) are complying with any law, rule or regulation applicable to their performance of the work except as otherwise provided in Section II.

F. NOTIFY THE ENGINEER OF DEFECTS OR DEVELOPMENT

Give prompt written notice to the Engineer whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of the Engineer's services, or any defect in the work of the contractor(s).

G. COSTS OF THE CITY'S RESPONSIBILITIES

Bear all costs incidental to compliance with the requirements of this Section III.

SECTION IV. GENERAL CONSIDERATIONS

A. SUCCESSORS AND ASSIGNS

The City and the Engineer each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Engineer shall not assign, sublet, or transfer their respective interests in this agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Engineer.

B. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work product developed by the Engineer in connection with this Project shall remain the property of the City whether the Project is completed or not. Reuse of any of the work product of the Engineer by the City on extensions of this Project or any other Project without written permission of the Engineer shall be at the City's risk and the City agrees to defend, indemnify and hold harmless the Engineer from all damages and costs including attorney fees arising out of such reuse by the City or others acting through the City.

C. ESTIMATES OF COST (COST OPINION)

Estimates of construction cost provided are to be made on the basis of the Engineer's experience, qualifications and the best of their professional judgment, but the Engineer does not guarantee the accuracy of such estimates as compared to the contractor's bids or the Project construction cost.

D. INSURANCE

1) Engineer shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota unless Engineer shall have successfully demonstrated to the City Attorney, in the reasonable exercise of his or her discretion that such insurance is not reasonably available in the market. If the Engineer demonstrates to the reasonable satisfaction of the City Attorney that such insurance requires hereunder is not reasonably available in the market, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the city which is reasonably available.

- a) Workers' compensation insurance in accordance with the laws of the State of Minnesota.
- b) Public Liability Insurance and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.
- c) Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, Engineer hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage ; and in event of any change, Engineer agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the

City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

- d) **City of Duluth shall be named as Additional Insured** under the Public Liability and Automobile Liability, or as an alternate, Engineer may provide Owners-Contractors Protective policy, naming himself and City of Duluth. Engineer shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Engineer to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.
- e) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than the notice provisions contained in the underlying insurance policy or policies. In addition, Engineer commits to provide to City notice to City at least 30 days prior to any change of the policy or coverages.

2) The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Engineer, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Engineer, its employees, agents and representatives in the performance of work covered by this Agreement.

3) Certificates showing that Engineer is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

4) The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies of the Engineer.

5) The certificates shall provide that the policies shall not be cancelled during the life of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.

6) Except as provided for in Section IV.D.1.d) above, Engineer hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section IV or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section IV.D of this Agreement, the term, "changed", shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City.

E. HOLD HARMLESS

The Engineer agrees that it shall defend, indemnify and hold harmless the City of Duluth and its officers, agents, servants and employees from any and all claims including claims for contribution or indemnity, demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of the City of Duluth or the Engineer by reason of death or injury to person or persons or the loss or damage to property arising out of, or by reason of, any act, omission, operation or work of the Engineer or its employees while engaged in the execution or performance of services under this Agreement except to the extent that such indemnification is specifically prohibited by Minnesota Statutes Chapter 337 or Section 604.21. Engineer shall not be required to indemnify City for claims of liability arising out of the sole negligent or intentional acts or omission of the City but shall be specifically required to and agrees to defend and indemnify City in all cases where claims of liability against the City arise out of acts or omissions which are passive or derivative of the negligent or intentional acts or omissions of Engineer, including but not limited to, the failure of the City to supervise, the failure to warn, the failure to prevent such acts or omission by Engineer and any other such source of liability. On ten days' written notice from the City of Duluth, the Engineer shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages.

F. TERMINATION

1) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than fifteen (15) calendar days' prior written notice (delivered by certified mail, return receipt requested) of intent to terminate.

2) This agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Engineer is given (1) not less than fifteen (15) calendar days' prior written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the City prior to termination.

3) Upon receipt of a notice of intent to terminate from the City pursuant to this agreement, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Engineer in performing this agreement, whether completed or in process.

4) Upon termination pursuant to this agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

G. LAWS, RULES AND REGULATIONS

The Engineer agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, State of Minnesota, the City of Duluth and their respective agencies and instrumentalities which are applicable to the work and services to be performed hereunder.

H. INDEPENDENT CONTRACTOR STATUS

Nothing contained in this agreement shall be construed to make the Engineer an employee or partner of the City. The Engineer shall at all times hereunder be construed to be an independent contractor.

I. FEDERAL FUNDING

If Federal Funds (i.e. HUD, FEMA, Revenue Sharing) are utilized as a source of Project funding, the Engineer shall abide by the terms of all Federal requirements in the performance of duties hereunder.

J. AMENDMENT OF AGREEMENT

This agreement shall be amended or supplemented only in writing and executed by both parties hereto.

SECTION V. PAYMENT

A. BASIS OF BILLING

City shall pay the Engineer based on hourly rates for all services rendered under Section II Phases A through G, an amount not to exceed the amount in Section V.C, including any and all Project-related expenses such as travel, reproduction of reports and drawings, tolls, mileage, etc. For the purposes of this agreement, the principals and employees of the Engineer and their hourly rates are set forth in Exhibit A.

B. PAYMENT FOR WORK COMPLETED

1) Monthly progress payments may be requested by the Engineer for work satisfactorily completed and shall be made by the City to the Engineer as soon as practicable upon submission of statements requesting payment by the Engineer to the City. When such progress payments are made, the City may withhold up to five percent (5%) of the vouchered amount until satisfactory completion by the Engineer of all work and services within a phase called for under this agreement. When the City determines that the work under this agreement for any specified phase hereunder is substantially complete, it shall release to the Engineer any retainage held for that phase.

2) No payment request made pursuant to subparagraph 1 of this Section V shall exceed the estimated maximum total amount and value of the total work and services to be performed by the Engineer under this agreement without the prior authorization of the City. These estimates have been prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the City.

3) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the City a release of all claims against the City arising under or by virtue of this agreement.

4) In the event of termination by City under Section IV.F., upon the completion of any phase of the Basic Services, progress payments due Engineer for services rendered through such phase shall constitute total payment for such services. In the event of such termination by City during any phase of the Basic Services, Engineer also will be reimbursed for the charges of independent professional associates and consultants employed by Engineer to render Basic Services, and paid for services rendered during that phase on the basis of hourly rates defined in Exhibit A of this agreement for services rendered during that phase to date of termination by Engineer's principals and employees engaged directly on the Project. In the event of any such termination, Engineer will be paid for all unpaid additional services plus all termination expenses. Termination expenses mean additional expenses directly attributable to termination, which, if termination is at City's convenience, shall include an amount computed as a percentage of total compensation for basic services earned by Engineer to the date of termination as follows: 10% of the difference between the amount which the Engineer has earned computed as described in paragraphs A and B of this section and the maximum payment amount described in paragraph C of this section. The above applies only if termination is for reasons other than the fault of the Engineer.

C. TOTAL NOT TO EXCEED:

All payments under this Contract are not to exceed [Click or tap here to enter text.](#) (\$[Click or tap here to enter text.](#)).

SECTION VI. SPECIAL PROVISIONS

The following exhibits are attached to and made part of this agreement:

- 1) Exhibit A, Engineer's Hourly Rates
- 2) Exhibit B, Engineer's Proposal

In the event of a conflict between the agreement and any Exhibit, the terms of the Agreement will be controlling.

SECTION VII. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

[Remainder of this page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

CITY OF DULUTH-Client

Click or tap here to enter text.

By: _____
Mayor

By: _____

Attest:

Its: _____
Title of Representative

By: _____
City Clerk

Date: _____

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney